

**13-39-101. Title.**

This chapter is known as the "Child Protection Registry."

Enacted by Chapter 338, 2004 General Session

**13-39-102. Definitions.**

As used in this chapter:

(1) "Contact point" means an electronic identification to which a communication may be sent, including:

(a) an email address; or

(b) subject to Subsection 13-39-201(2):

(i) an instant message identity, subject to rules made by the division under Subsection 13-39-203(1);

(ii) a mobile or other telephone number;

(iii) a facsimile number; or

(iv) an electronic address:

(A) similar to a contact point listed in this Subsection (1); and

(B) defined as a contact point by rule made by the division under Subsection 13-39-203(1).

(2) "Division" means the Division of Consumer Protection in the Department of Commerce.

(3) "Registry" means the child protection registry established in Section 13-39-201.

Amended by Chapter 336, 2006 General Session

**13-39-201. Establishment of child protection registry.**

(1) The division shall:

(a) establish and operate a child protection registry to compile and secure a list of contact points the division has received pursuant to this section; or

(b) contract with a third party to establish and secure the registry described in Subsection (1)(a).

(2) (a) The division shall implement the registry described in this section with respect to email addresses beginning on July 1, 2005.

(b) The division shall implement the registry described in this section with respect to instant message identities.

(c) The division shall implement the registry described in this section with respect to mobile or other telephone numbers.

(3) (a) A person may register a contact point with the division pursuant to rules established by the division under Subsection 13-39-203(1) if:

(i) the contact point belongs to a minor;

(ii) a minor has access to the contact point; or

(iii) the contact point is used in a household in which a minor is present.

(b) A school or other institution that primarily serves minors may register its domain name with the division pursuant to rules made by the division under Subsection 13-39-203(1).

(c) The division shall provide a disclosure in a confirmation message sent to a person who registers a contact point under this section that reads: "No solution is completely secure. The most effective way to protect children on the Internet is to supervise use and review all email messages and other correspondence. Under law, theft of a contact point from the Child Protection Registry is a second degree felony. While every attempt will be made to secure the Child Protection Registry, registrants and their guardians should be aware that their contact points may be at a greater risk of being misappropriated by marketers who choose to disobey the law."

(4) A person desiring to send a communication described in Subsection 13-39-202(1) to a contact point or domain shall:

(a) use a mechanism established by rule made by the division under Subsection 13-39-203(2); and

(b) pay a fee for use of the mechanism described in Subsection (4)(a) determined by the division in accordance with Section 63J-1-504.

(5) The division may implement a program to offer discounted compliance fees to senders who meet enhanced security conditions established and verified by the division, the third party registry provider, or a designee.

(6) The contents of the registry, and any complaint filed about a sender who violates this chapter, are not subject to public disclosure under Title 63G, Chapter 2, Government Records Access and Management Act.

(7) The state shall promote the registry on the state's official Internet website.

Amended by Chapter 183, 2009 General Session

**13-39-202. Prohibition of sending certain materials to a registered contact point -- Exception for consent.**

(1) A person may not send, cause to be sent, or conspire with a third party to send a communication to a contact point or domain that has been registered for more than 30 calendar days with the division under Section 13-39-201 if the communication:

(a) has the primary purpose of advertising or promoting a product or service that a minor is prohibited by law from purchasing; or

(b) contains or has the primary purpose of advertising or promoting material that is harmful to minors, as defined in Section 76-10-1201.

(2) Except as provided in Subsection (4), consent of a minor is not a defense to a violation of this section.

(3) An Internet service provider does not violate this section for solely transmitting a message across the network of the Internet service provider.

(4) (a) Notwithstanding Subsection (1), a person may send a communication to a contact point if, before sending the communication, the person sending the communication receives consent from an adult who controls the contact point.

(b) Any person who proposes to send a communication under Subsection (4)(a) shall:

(i) verify the age of the adult who controls the contact point by inspecting the adult's government-issued identification card in a face-to-face transaction;

(ii) obtain a written record indicating the adult's consent that is signed by the adult;

- (iii) include in each communication:
  - (A) a notice that the adult may rescind the consent; and
  - (B) information that allows the adult to opt out of receiving future communications; and
- (iv) notify the division that the person intends to send communications under this Subsection (4).
- (c) The division shall implement rules to verify that a person providing notification under Subsection (4)(b)(iv) complies with this Subsection (4).

Amended by Chapter 336, 2006 General Session

**13-39-203. Rulemaking authority.**

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules to establish procedures under which:

- (1) (a) a person may register a contact point with the division under Section 13-39-201, including:
  - (i) the information necessary to register an instant message identity; and
  - (ii) for purposes of Subsection 13-39-102(1)(b)(iv), an electronic address that is similar to a contact point listed in Subsection 13-39-102(1); and
- (b) a school or other institution that primarily serves minors may register its domain name with the division under Section 13-39-201;
- (2) the division shall:
  - (a) provide a mechanism under which a person described in Subsection 13-39-201(4) may verify compliance with the registry to remove registered contact points from the person's communications; and
  - (b) establish the mechanism described in Subsection (2)(a) in a manner that protects the privacy and security of a contact point registered with the division under Section 13-39-201; and
- (3) the division may:
  - (a) implement a program offering discounted fees to a sender who meets enhanced security conditions established and verified by the division, the third party registry provider, or a designee; and
  - (b) allow the third party registry provider to assist in any public or industry awareness campaign promoting the registry.

Amended by Chapter 382, 2008 General Session

**13-39-301. Criminal penalty.**

- (1) A person who violates Section 13-39-202 commits a computer crime and:
  - (a) is guilty of a class B misdemeanor for a first offense with respect to a contact point registered with the division under Subsection 13-39-201(3)(a); and
  - (b) is guilty of a class A misdemeanor:
    - (i) for each subsequent violation with respect to a contact point registered with the division under Subsection 13-39-201(3)(a); or
    - (ii) for each violation with respect to a domain name registered with the division under Subsection 13-39-201(3)(b).

(2) A person commits a computer crime and is guilty of a second degree felony if the person:

- (a) uses information obtained from the division under this chapter to violate Section 13-39-202;
- (b) improperly:
  - (i) obtains contact points from the registry; or
  - (ii) attempts to obtain contact points from the registry; or
- (c) uses, or transfers to a third party to use, information from the registry to send a solicitation.

(3) A criminal conviction or penalty under this section does not relieve a person from civil liability in an action under Section 13-39-302.

(4) Each communication sent in violation of Section 13-39-202 is a separate offense under this section.

Enacted by Chapter 338, 2004 General Session

**13-39-302. Civil action for violation.**

- (1) For a violation of Section 13-39-202, an action may be brought by:
  - (a) a user of a contact point or domain name registered with the division under Section 13-39-201; or
  - (b) a legal guardian of a user described in Subsection (1)(a).
- (2) In each action under Subsection (1):
  - (a) a person described in Subsection (1) may recover the greater of:
    - (i) actual damages; or
    - (ii) \$1,000 for each communication sent in violation of Section 13-39-202; and
  - (b) the prevailing party shall be awarded costs and reasonable attorney fees.

Enacted by Chapter 338, 2004 General Session

**13-39-303. Administrative enforcement.**

- (1) The division shall:
  - (a) investigate violations of this chapter; and
  - (b) assess cease and desist orders and administrative fines under this section for violations of this chapter.
- (2) A person who violates this chapter is subject to:
  - (a) a cease and desist order; and
  - (b) an administrative fine of not more than \$2,500 for each separate communication sent in violation of Section 13-39-202.
- (3) (a) A person who intentionally violates this chapter is subject to an administrative fine of not more than \$5,000 for each communication intentionally sent in violation of Section 13-39-202.
- (b) For purposes of this section, a person intentionally violates this chapter if the violation occurs after the division, attorney general, or a district or county attorney notifies the person by certified mail that the person is in violation of this chapter.
- (4) All administrative fines collected under this section shall be deposited in the Consumer Protection Education and Training Fund created in Section 13-2-8.

Enacted by Chapter 338, 2004 General Session

**13-39-304. Defenses.**

It is a defense to an action brought under this chapter that a person:

- (1) reasonably relied on the mechanism established by the division under Subsection 13-39-203(2); and
- (2) took reasonable measures to comply with this chapter.

Enacted by Chapter 338, 2004 General Session